

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart OO—Rhode Island

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Under § 52.2070, *Identification of Plan*, add paragraph (c)(11) as shown below:

§ 52.2070 Identification of Plan.

(c) * * *

(11) A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR Part 58, was submitted by the Rhode Island Department of Environmental Management Director on January 8, 1980.

[FR Doc. 81-1524 Filed 1-14-81; 8:45 am]

BILLING CODE 5560-39-M

40 CFR Part 123

[SW-1-FRL 1726-5]

Vermont Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region I.

ACTION: Approval of State hazardous waste management program.

SUMMARY: The purpose of this Notice is to grant Phase I interim authorization to the State of Vermont for its hazardous waste management program.

In the May 19, 1980, *Federal Register* (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which states could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two phases in which the underlying Federal program will take effect.

On October 10, 1980, the State of Vermont applied to EPA for Phase I interim authorization of its hazardous waste management program. On November 5, 1980, EPA issued in the *Federal Register* (45 FR 73521) a notice of public hearing and public comment period on the State's application. All comments received during this period

have been considered and are discussed below.

The State of Vermont is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with Section 3006(c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

EFFECTIVE DATE: January 8, 1981.

FOR FURTHER INFORMATION CONTACT: Barbara L. Walsh, Waste Management Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-5775).

SUPPLEMENTARY INFORMATION: The State of Vermont submitted a draft application for Phase I interim authorization on August 15, 1980. In the comments to the State on the draft application, EPA identified issues in the Program Description, MOA, Attorney General's Statement, and Authorization Plan which required further clarification or amendment. Although most of these issues were addressed in the final application submitted to EPA on October 10, 1980, the application relied upon proposed regulations for coverage of several important wastes and facility standards. Thus, the application was not determined to be complete until October 31, 1980 when the proposed regulations were adopted. The following issues were not resolved in the complete application but were either later addressed by the State in minor amendments to the application or eliminated after further consideration of additional information:

1. Coverage of waste economic poisons (pesticides);
2. Coverage of State hazardous waste activities;
3. Lack of detailed description of delisting procedures;
4. Lack of detailed description and opportunity for EPA to comment on variances;
5. Lack of specific assurance that the State will continue to share confidential information with EPA;
6. Limits on public participation in enforcement actions;
7. The provision for excessively long prior notice to the State in cases where EPA will issue a notice of violation or compliance order; and
8. Lack of breadth and detail in the Authorization Plan.

The discussion below indicates specifically how each issue was resolved.

1. Coverage of Waste Economic Poisons. Because the Vermont Agency of Environmental Conservation (AEC) lacks the authority to regulate waste economic poisons under its hazardous

waste program, the Agency demonstrated in the Program Description that only a small amount of the pesticides and herbicides used in Vermont actually become wastes so that the AEC does meet the requirement of 123.128(a) that "the State program must control a universe of wastes generated, transported, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program under 40 CFR Part 261." Furthermore, the State has committed in the Authorization Plan to make those changes in the Department of Agriculture (DOA) statute and regulations needed for final authorization.

In addition, EPA requested further information on the coverage of waste economic poisons in Vermont in the *Federal Register* Notice of Public Hearing, November 5, 1980, and also consulted with Vermont DOA officials, but received no evidence to dispute the figures presented in the Program Description. Those commenting at the Public Hearing on the coverage of waste economic poisons felt that the issue was a minor one and expressed support for the Vermont DOA's current efforts to develop comprehensive regulations for waste economic poisons by Spring, 1981. EPA, therefore, believes that the State program does control a universe of wastes in the State which is nearly identical to that which would be controlled by the Federal program.

2. Coverage of State Hazardous Waste Activities. EPA was concerned about the ability of the Vermont AEC to regulate any State hazardous waste activities since the term "State" is not included in the statutory definition of person in 10 VSA 6602(6). In response, the State has provided additional information on State hazardous waste activities in addenda to the Program Description and Attorney General's statement that demonstrate that the only "State" entity to notify of hazardous waste activities was the University of Vermont and that the University is a corporation which is regulated by the Vermont hazardous waste program under the present definition of person. In addition, EPA solicited but did not receive evidence at the public hearing to dispute the notification data. EPA, therefore, believes that the State program does adequately control all State hazardous waste activities.

3. Delisting Procedures. The lack of detailed description of the Vermont delisting procedure in the final application caused concern about the substantial equivalence of the State's procedure with the Federal procedure at

40 CFR 260.20 and 40 CFR 260.22.

Vermont has satisfied our concern by submitting an addendum to the Program Description of the final application. The addendum describes the delisting procedure in detail and specifically states that the Secretary will use the Federal regulations as guidance in making listing or delisting decisions and that all such procedures are consistent and equivalent with those specified in 40 CFR §§ 260.20 and 261.11.

Furthermore, Vermont has added to the MOA "the delisting of any waste or generic class of waste" as an example of a program change that will be considered substantial and will require notification of the Regional Administrator.

4. *Variances.* The lack of detailed description of the variance procedure at 10 VSA 6613 and lack of opportunity for EPA to comment prior to issuance of variances caused EPA to question the continued substantial equivalence of the Vermont program. Vermont responded satisfactorily to our request for additional information by adding a section to the Program Description which further describes the Variance Board procedures including the requirement for a public hearing, emphasizes the statutory constraints on Board decisions, and recounts previous positive experiences with the Board under the Air program. In addition, Vermont has assured EPA in the MOA that it will notify the Regional Administrator prior to the issuance of any variance so that EPA will have the opportunity to review and comment on any variance request.

5. *Sharing Confidential Information.* Although the Vermont Attorney General concluded in the final application that Vermont had shared confidential information with Federal agencies in the past as a matter of custom, and would continue to do so, EPA requested explicit assurance that the custom would continue during interim authorization. Vermont has since amended Part II C 3 of the MOA to give that assurance.

6. *Public Participation in Enforcement Actions.* EPA requested that Vermont amend the MOA to delete several phrases that might limit the opportunity for public participation and secure the agreement of the Attorney General to meet the relevant requirements of 40 CFR 123.128(f)(2)(ii). Vermont has amended Sections II B 2 f 1 and 3 of the MOA to remove the limiting phrases and in addition the Vermont Attorney

General has, by letter to EPA Regional Administrator, William R. Adams, Jr., agreed to meet the relevant requirements of 40 CFR 123.128(f)(2)(ii).

7. *Notification Prior to Issuance of NOV's and Compliance Orders.* EPA could not accept the constraints imposed on the Federal enforcement effort by the MOA provision for notification of the State 30 days prior to issuance of an NOV or Compliance Order. In response, Vermont has satisfied EPA's concern by amending the MOA to provide for a 7-day prior notice period.

8. *Authorization Plan.* In our review of Vermont's final application, EPA indicated that the Authorization Plan lacked detail such as specific information about Vermont's legislative procedures and commitment to address several issues affecting the program's equivalency for final authorization. In response to our comment, Vermont has submitted an addendum to the Authorization Plan which provides the additional detail and addresses all of the additions and modifications known to be necessary for the State Program to qualify for final authorization.

In the Federal Register notice of November 5, 1980 (45 FR 73521), EPA gave the public until December 10, 1980 to comment on Vermont's application. EPA also held a public hearing in Montpelier, Vermont on December 5, 1980.

EPA received three oral comments at the public hearing from speakers representing Vermont industrial and civic groups. All three commenters spoke in favor of the interim authorization of the Vermont program.

Two of the speakers responded to the two following issues raised by EPA in the Federal Register notice: (1) The coverage of waste economic poisons and (2) the coverage of State activities under the definition of person. Neither speaker felt these issues were major deficiencies. Both speakers expressed support of the Vermont Department of Agriculture's current efforts to develop comprehensive regulations for waste economic poisons by Spring, 1981. One speaker also expressed the opinion that the exclusion of the term "State" in the definition of "person" was an oversight in wording which the State is committed to rectify.

EPA also received two written comments. The first written comment received did not express an opinion on the interim authorization of the Vermont program but did express concern that the Vermont Hazardous Waste program's reduction of the small

generator exclusion would unfairly regulate many retailers and that there is no list of hazardous wastes that are covered by Vermont regulations.

The coverage of retailers as a class was an issue considered by EPA when the Federal regulations were promulgated on May 19, 1980. As stated in the preamble to those regulations (FR, 5/19/80, p. 33103), commenters on the proposed Federal regulations pointed out that some retailers may generate extremely hazardous wastes and that others, such as large hardware or garden stores, may generate substantial quantities of hazardous waste. Thus, in the final Federal regulations, retailers who generate hazardous waste are subject to the same requirements as any other generator.

Similarly, the Vermont Hazardous Waste program does not exempt retailers who generate hazardous waste from coverage by the regulation. The State program does, however, have a lower small generator limit than the Federal limit of 1000 kg/month for hazardous wastes. The State small generator limit is 100 kg/month. Vermont's lower small generator limit is clearly permitted by Federal regulation (40 CFR 123.121 g) and is consistent with EPA's goal to expand Subtitle C coverage of generators to include hazardous waste generators of over 100 kg/month (FR 5/19/80, p. 33104).

A list of generic wastes that the Vermont Agency of Environmental Conservation has determined to be hazardous can be found in Section 6-602 (2). In addition, the Secretary may, upon petition or his or her own motion, make a determination that a particular waste meets the statutory definition of hazardous waste at 10 VSA Section 6602(4). EPA has determined that the Vermont list of generic wastes is substantially equivalent to the Federal list at 40 CFR Part 261 for those wastes existing in Vermont.

The second written comment received by EPA expressed support of the opinions presented at the public hearing and urged EPA to grant interim authorization to the Vermont Hazardous Waste program.

Dated: January 8, 1981.

William R. Adams, Jr.,

Regional Administrator.

[FR Doc. 81-1454 Filed 1-14-81; 8:40 am]

BILLING CODE 5560-38-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 1

(FPR Temp. Reg. 57)

Purchases Under the Trade Agreements Act of 1979; Temporary Regulations

AGENCY: General Services
Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation prescribes policies and procedures applicable to the procurement of supplies and services which involve offers from foreign business concerns. The regulation is based on the Trade Agreements Act of 1979 and the related Agreement on Government Procurement. The intended effect is to eliminate the discriminations practiced by the United States and foreign Governments in the procurement of products and supplies.

DATE: Effective date: This regulation is effective for all solicitations issued on and after January 1, 1981, as follows:

a. When solicitations involve negotiated procurements, do not reflect the provisions of this regulation, and have not resulted in awards prior to January 21, 1981, the solicitation shall be amended to include the requirements in § 1-6.1611.

b. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is prior to January 21, 1981, awards may be made without regard to this regulation.

c. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is after January 21, 1981, but the solicitation was issued before that date, the solicitation shall be amended to include the requirements in § 1-6.1611.

d. All solicitations issued after January 21, 1981, shall comply fully with the provisions of this regulation.

Expiration date: This regulation will continue in effect until January 1, 1983.

Comment date: Comments due by March 23, 1981. Time did not permit the solicitation of comments prior to the issuance of this regulation. However, comments from interested parties would be welcomed.

ADDRESS: General Services
Administration (VR), Washington, DC
20406.

FOR FURTHER INFORMATION CONTACT:
Philip G. Read, Director, Federal
Procurement Regulations Directorate,

Office of Acquisition Policy (703-557-
8947).

SUPPLEMENTARY INFORMATION: The Buy American Act, subject to certain exclusions, has been waived by the President for eligible products originating in designated countries meeting the requirements under section 301(b) of the Trade Agreements Act of 1979. The waiver is effective when the total price paid for a product is equal to or more than the dollar threshold specified by the U.S. Trade Representative (now \$196,000). The Buy American Act continues to apply to procurements which are less than the dollar limitation and to countries that are not parties to the Agreement.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

In 41 CFR Chapter 1, the following temporary regulation is listed in the Appendix at the end of the chapter.

[Federal Procurement Regs.; Temporary Reg. 57]

Purchases Under the Trade Agreements Act of 1979

January 12, 1981.

1. **Purpose.** This FPR temporary regulation implements the provisions of the Trade Agreements Act of 1979 and Executive Order 12260, December 31, 1980.

2. **Effective date.** This regulation is effective for all solicitations issued on and after January 1, 1981, as follows: a. When solicitations involve negotiated procurements, do not reflect the provisions of this regulation, and have not resulted in awards prior to January 21, 1981, the solicitation shall be amended to include the requirements in § 1-6.1611.

b. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is prior to January 21, 1981, awards may be made without regard to this regulation.

c. When solicitations involve formal advertising, do not reflect the provisions of this regulation, and the closing date for the submission of offers is after January 21, 1981, but the solicitation was issued before that date, the solicitation shall be amended to include the requirements in § 1-6.1611.

d. All solicitations issued after January 21, 1981, shall comply fully with the provisions of this regulation.

3. **Expiration date.** This regulation will continue in effect until January 1, 1983.

4. **Background.** a. New Subpart 1-6.16 implements the Agreement on Government Procurement, which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral

Trade Negotiations. The agreements were entered into in Geneva on April 12, 1979, pursuant to section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2511-2518), Executive Order 12260, December 31, 1980 (46 FR 1653, January 6, 1981), and Determinations by the U.S. Trade Representative, December 31, 1980 (46 FR 1657, January 6, 1981).

b. The Agreement requires the administration of certain procurement programs so that eligible products and suppliers of eligible products from designated countries are treated no less favorably than domestic products and suppliers. It also requires that there be no discrimination with respect to eligible products or suppliers from designated countries.

c. The Buy American Act, subject to certain exclusions, has been waived by the President for eligible products originating in designated countries meeting the requirements under section 301(b) of the Act. The waiver is effective when the total price paid for a product is equal to or more than the dollar threshold specified by the U.S. Trade Representative (now \$196,000). The dollar limitation may be modified from time to time. The Buy American Act continues to apply to procurements which are less than the dollar limitation and to countries that are not parties to the Agreement.

5. **Explanation of changes.**

a. Section 1-1.1003-7 is amended to add new paragraph (b)(10) as follows:

§ 1-1.1003-7 *Preparation and transmittal.*

(b) * * *

(10) *Trade Agreements Act of 1979—eligible products.* For the procurement of an eligible product from a designated country when the total estimated price of the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), each synopsis sent to the Commerce Business Daily, in addition to other requirements of this § 1-1.1003-7(b), shall indicate: (i) The nature and quantity of the products to be supplied, or envisaged to be purchased in the case of contracts of a recurring nature; (ii) Whether the purchase is open (competitive) or sole source; (iii) Any delivery date requirements; (iv) The address and final date for submitting an application to be invited to offer or for receiving offers; (v) That offers must be submitted in the English language and in U.S. dollars; (vi) The address of the activity that will award the contract and any

information necessary for obtaining specifications and other documents;

(vii) Any economic and technical requirements, financial guarantees, and information required from suppliers that is stated in the solicitation; and

(viii) The amount and terms of payment of any sum required in order to obtain the solicitation documentation, if any.

b. Section 1-2.202 is amended to add new paragraph (d) to § 1-2.202-1 and to add a new § 1-2.202-7, as follows:

§ 1-2.202 Miscellaneous rules for solicitation of bids.

§ 1-2.202-1 Bidding time.

(d) *Trade Agreements Act of 1979—eligible products.* When a solicitation involves eligible products under the Trade Agreements Act of 1979, and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall specify at least a 30-day bidding time from the date of issuance of the solicitation (see § 1-6.1605-1(b)(4)).

§ 1-2.202-7 Trade Agreements Act of 1979—eligible products.

When a solicitation involves eligible products and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall require that offers be submitted in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

c. Section 1-2.203-4 is amended to designate the existing paragraph as (a) and to add a new paragraph (b) as follows:

§ 1-2.203-4 Synopses of invitations for bids.

(a) * * *

(b) The synopsis of a proposed procurement of an eligible product from designated countries, when the total estimated price of the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), shall state that offers must be in the English language and in U.S. dollars (see § 1-6.1605-1(b)(6)).

d. Section 1-2.402 is amended to add paragraph (d) as follows:

§ 1-2.402 Opening of bids.

(d)(1) When offers involving eligible products from a designated country are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present.

(2) The name of the impartial witness, if any, shall appear on the abstract of offers.

e. Section 1-2.408 is amended to redesignate the present text as § 1-2.408-1 and to add a new § 1-2.408-2 as follows:

§ 1-2.408 Information to bidders.

§ 1-2.408-1 Rejection of offers (general).

§ 1-2.408-2 Rejection of offers under the Trade Agreements Act of 1979.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country, and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see §§ 1-6.1601(e) and 1-6.1608).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

f. Section 1-3.105 is added as follows:

§ 1-3.105 Trade Agreements Act of 1979—eligible products.

§ 1-3.105-1 Time for the submission of offers.

When solicitations involve eligible products under the Trade Agreements Act of 1979 and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall specify at least 30 days for the submission of offers (see § 1-6.1605-1(b)(4)).

§ 1-3.105-2 English language and U.S. dollars.

When a solicitation involves eligible products and the total estimated price of a product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the solicitation shall require that offers are to be submitted in the English language and in U.S. dollars (see § 1-6.105-1(b)(6)).

§ 1-3.105-3 Opening offers.

(a) When offers involving eligible products from designated countries are opened, offerors or their representatives or an appropriate and impartial witness not connected with the acquisition shall be present. However, there shall be no disclosure of the offers.

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.402 and 1-3.611).

§ 1-3.105-4 Notification of nonacceptance of offer.

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted when an offer involves an eligible product from a designated country and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

(b) Additional information requested by an unsuccessful offeror of an eligible product from a designated country shall be provided by an official above the level of the contracting officer (see § 1-6.1608(b)).

g. Subpart 1-6.16 is added as follows:

Subparts 1-6.11—1-6.15 [Reserved]

Subpart 1-6.16 Purchases under the Trade Agreements Act of 1979.

§ 1-6.1600 Scope.

This subpart implements the Agreement on Government Procurement (hereafter referred to as the Agreement) which is a part of the trade agreements negotiated in the Tokyo Round of the Multilateral Trade Negotiations. The Agreements were entered into in Geneva on April 12, 1979, pursuant to section 102 of the Trade Act of 1974. The authority to implement the Agreement is provided by the Trade Agreements Act of 1979 (Public Law 96-39, 19 U.S.C. 2511-2518) and Executive Order 12260, December 31, 1980, (46 FR 1653, January 6, 1981) and Determinations by the U.S. Trade Representative, December 31, 1980, (46 FR 1657, January 6, 1981).

§ 1-6.1601 Definitions.

The terms used in this subpart have meanings as follows: (a) "Designated country" means a country or instrumentality designated by the President or the U.S. Trade Representative under section 301 of the Trade Agreements Act of 1979 (19 U.S.C. 2511). Designated countries are listed at § 1-6.1612. Additions will be announced in later FPR changes.

(b) "Eligible product" means, with respect to any designated country, a product of that country which is covered by the Agreement for purposes of acquisition. This includes services (other than transportation) incidental to the supply of products if the value of those incidental services does not exceed the value of the products themselves. It does not include service contracts. For the

United States, all products are eligible, except to the extent that they are excluded by reason of the absence of an agency from the list of agencies in § 1-6.1613.

(c) "Product" means a line item in a solicitation. However, if two or more line items carry identical stock numbers or other identification, this situation shall be deemed to constitute a single line item.

(d) "Rule of Origin" means that an article is a product of a designated country if (1) it is wholly the growth, product, or manufacture of that country, or (2) in the case of an article which consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed (see § 1-6.1609).

(e) "Dollar threshold" means \$196,000 or such other dollar amount as may be specified by the U.S. Trade Representative, from time to time.

§ 1-6.1602 Policy.

(a) Offers of eligible products from designated countries shall be solicited and evaluated in the same manner as offers of products from the United States. Designated countries are listed in § 1-6.1612.

(b) When the country of origin is not listed in § 1-6.1612, the Buy American Act (see Subpart 1-6.1) and the Balance of Payments Program (see Subpart 1-6.8) are applicable. In addition, those subparts apply if the total price paid for an eligible product is less than the specified dollar threshold (see § 1-6.1601(e)).

(c) The Buy American Act; i.e., the preference for U.S. products in the award of contracts, is, or may be, waived (subject to a number of exclusions; see § 1-6.1603) for purchases specifically covered by the Agreement.

(d) Countries that benefit from open competition for contracts awarded by the Government are required to offer reciprocal competitive opportunities to U.S. products and suppliers. The Agreement prohibits discrimination against U.S. suppliers in procurements by foreign governments. It also requires nondiscrimination and open and transparent application of required procurement procedures.

§ 1-6.1603 Applicability.

(a) The policies in this subpart apply only (1) if the total price paid for an eligible product (not two or more different eligible products) from a designated country is equal to or more

than the specified dollar threshold, and (2) to the agencies listed in § 1-6.1613.

(b) If a contracting officer determines that an individual requirement for the acquisition of a product or products of the same type; e.g., an indefinite quantity type contract, may result in payments during the fiscal year which are equal to or more than the specified dollar threshold, the policies in this subpart shall apply.

(c) No acquisition of an eligible product shall be subject of more than one solicitation for the purpose of reducing the value of the resulting offers to amounts less than the specified dollar threshold.

(d) When a solicitation for an eligible product results in two or more contract awards for the product, the provisions of this Subpart 1-6.16 apply if the total amount of the contracts is equal to or more than the specified dollar threshold.

(e) The policies in this subpart do not apply to: (1) Purchases under small business set-aside programs or minority business programs (see § 1-6.1604);

(2) Purchases of arms, ammunition, or war materials, or purchases indispensable for national security or national defense purposes, subject to policies established by the U.S. Trade Representative;

(3) Construction contracts;

(4) Service contracts (but services other than transportation incidental to the purchase of eligible products are covered by the Agreement, provided that the value of the service is not greater than the value of the product);

(5) Research and development contracts;

(6) Purchases for resale purposes;

(7) Purchases relating to the products of handicapped persons, of philanthropic institutions, or of prison labor;

(8) Leases or rentals of any item;

(9) Purchases for agencies not subject to the Agreement;

(10) Tied-aid procurements under AID foreign assistance programs; or

(11) Purchases by State and local governments, including purchases by State and local authorities with Federal funds.

§ 1-6.1604 Labor surplus area set-asides.

(a) Total labor surplus area set-asides which are not limited to small business shall not be made for procurements covered by this Subpart 1-6.16.

(b) Total or partial set-asides for small and minority businesses, whether or not combined with a labor surplus area set-aside (see section 117(e) of Pub. L. 96-302), are not covered by the Agreement (see § 1-6.1603).

§ 1-6.1605 Procedures for the purchase of eligible products from designated countries.

§ 1-6.1605-1 Solicitation procedures under this subpart.

When the estimated price of an eligible product included in a solicitation is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), the following solicitation procedures are applicable. However, if the offer received for an eligible product which is the basis for the award is less than the dollar threshold, this subpart does not apply (see § 1-6.1603).

(a) *Publicizing proposed purchases.* When the estimated price of an eligible product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)), a notice of proposed purchase shall be published in the Commerce Business Daily, in accordance with the requirements in § 1-1.1003-7(b)(10).

(b) *Solicitation of eligible products from designated countries.* (1) Sources offering eligible products from designated countries shall be included, upon request by these sources, on bidders mailing lists and comparable source lists, in accordance with the procedures in § 1-2.205.

(2) Solicitations for eligible products shall be sent directly to the sources for the products which appear on appropriate bidders mailing lists. When solicitations will be sent outside the United States, international airmail shall be employed (see §§ 1-2.202-1 and 1-2.203-1).

(3) Solicitations involving eligible products shall be made available, on request, to the embassy or other designated place or representative of a designated country.

(4) At least 30 days from the date of a solicitation shall be provided, consistent with the nature of and requirements for supplies or services, for the submission of offers involving eligible products from designated countries (see §§ 1-2.202-1 and 1-3.105-1).

(5) No technical requirements may be imposed solely for the purpose of precluding the acquisition of eligible products from designated countries.

(6) Solicitations shall require that offers involving eligible products from designated countries be submitted in the English language and in U.S. dollars (see §§ 1-2.201(a)(33), 1-2.202-7, and 1-3.105-2).

§ 1-6.1606 Opening of offers.

(a) When offers involving eligible products are opened, offerors or their representatives or an appropriate and impartial witness not connected with

the acquisition shall be present (see §§ 1-2.402 and 1-3.105-3).

(b) The name of the impartial witness, if any, shall appear on the abstract of offers (see §§ 1-2.403 and 1-3.811).

§ 1-6.1607 *Evaluation of offers.*

Offers of eligible products from designated countries which are equal to or more than the specified dollar threshold (see § 1-6.1601(e)), shall be evaluated without regard to the Buy American Act or Balance of Payments Program, except as provided in § 1-6.1603.

§ 1-6.1608 *Information to unsuccessful offerors.*

(a) Contracting officers shall notify unsuccessful offerors in writing within seven working days after the award of a contract (or contracts) that their offers were not accepted (see §§ 1-2.408-2(a) and 1-3.105-4(a)) when an offer involves an eligible product from a designated country and the total price paid (sum of all contracts for a product under a solicitation) for the product is equal to or more than the specified dollar threshold (see § 1-6.1601(e)).

(b) Subsequent to the notice, if additional information is requested by an unsuccessful offeror, it shall be provided by an official above the level of the contracting officer (see §§ 1-2.408-2(b) and 1-3.105-4(b)).

§ 1-6.1609 *Certificate of eligible product.*

(a) Contracting officers shall rely on certificates by the offeror for purposes of satisfying the Rule of Origin. The following certificate shall be inserted in all solicitations for eligible products when the estimated price is equal to or more than the specified dollar threshold (see § 1-6.1603).

Certificate of Eligible Product

(a) The offeror hereby certifies that each eligible product, as provided in 41 CFR 1-6.1601, which is delivered in accordance with any contract resulting from this solicitation is from a country designated by the President or the U.S. Trade Representative pursuant to section 301 of the Trade Agreements Act of 1979.

(b) Offerors are encouraged to obtain advance decisions from the Commissioner of Customs regarding the origin of eligible products as provided in 19 CFR Part 177. Decisions rendered by the Commissioner should accompany the offer.

(b) The reliance of the contracting officer on the certification for award purposes shall not be affected by a failure of an offeror to obtain an advance decision and to furnish a copy of the decision with its offer.

(c) Any question regarding the validity of a certification which the Contracting Officer receives from another offeror shall be referred to the Commissioner of Customs for consideration by the offeror whose certification is challenged. It shall not be treated as a basis for holding up an award. However, failure of a challenged offeror to refer the matter to the Commissioner of Customs, upon the request of the Contracting Officer, will result in rejection of the offer.

(d) If a certification subsequently is determined by the Commissioner of Customs to be invalid, the imposition of penalties as authorized by law shall be considered, e.g., criminal penalty for false representation under 18 U.S.C. 1001.

§ 1-6.1610 *Reporting requirements.*

The reporting requirements of the Trade Agreements Act of 1979 will be satisfied by Individual Agency Procurement Action Reports.

§ 1-6.1611 *Buy American Act clause.*

When an eligible product is involved, the clause prescribed by § 1-6.104-5 and by Standard Forms 32 and 147 shall be amended by adding an addendum to the solicitation which provides for the incorporation of a parenthetical phrase following the title of the clause as follows:

(This Buy American Act clause is not applicable to contracts involving eligible products from designated countries when the award price for the product is \$(insert prescribed amount) or more)

§ 1-6.1612 *Designated countries.*

Austria; Bangladesh; Belgium; Benin; Bhutan; Botswana; Burundi; Canada; Cape Verde; Central African Republic; Chad; Comoros; Denmark; Federal Republic of Germany; Finland; France; Gambia; Guinea; Haiti; Hong Kong; Ireland; Italy; Japan; Lesotho; Luxembourg; Malawi; Maldives; Mali; Nepal; Netherlands; Niger; Norway; Rwanda; Singapore; Somalia; Sweden; Switzerland; Western Samoa; Sudan; Tanzania U.R.; Uganda; United Kingdom; Upper Volta; Yemen AR.

§ 1-6.1613 *Agencies covered by the Agreement.*

ACTION

Administrative Conference of the United States
American Battle Monuments Commission
Board for International Broadcasting
Civil Aeronautics Board
Commission on Civil Rights
Commodity Futures Trading Commission
Community Services Administration
Consumer Product Safety Commission

Departments of—Agriculture;¹ Commerce; Defense;² Education; Health and Human Services; Housing and Urban Development; Interior;³ Justice; Labor; State; Treasury.
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Home Loan Bank Board
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Trade Commission
General Services Administration⁴
Inter-State Commerce Commission
Merit Systems Protection Board
National Aeronautics and Space Administration
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Smithsonian Institution
United States Arms Control and Disarmament Agency
United States International Communication Agency
United States International Development Cooperation Agency
United States International Trade Commission
Veterans Administration

§ 1-6.1614 *Ineligibility to participate in U.S. procurement.*

No purchase which is equal to or more than the specified dollar threshold may be made by an agency listed in § 1-6.1613 of an eligible product subject to the Agreement from countries listed in this § 1-6.1614. However, this limitation may be waived in the national interest in accordance with policies established by the U.S. Trade Representative.

Greece

6. *Agency action.* Pending the issuance of a permanent amendment to the Federal Procurement Regulations, agencies shall follow the policies and procedures in this temporary regulation.

7. *Submission of comments.* Time did not permit the solicitation of comments prior to the issuance of this regulation. However, comments from interested

¹ The Agreement on Government Procurement does not apply to the procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs.

² Excludes Corps of Engineers.

³ Excludes the Bureau of Reclamation.

⁴ Excludes purchases by the National Tool Center, and the Region 9 Office (San Francisco, California).

parties would be welcomed. ADDRESS: General Services Administration (VR), Washington, DC 20406.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-1547 Filed 1-14-81; 8:45 am]

BILLING CODE 6820-61-M

Public Buildings Service

41 CFR Part 101-20

[FPMR Amdt. D-77]

Rules and Regulations Governing Public Buildings and Grounds

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation revises the GSA rules and regulations governing public buildings and grounds. It encourages the public to exercise its right to use these buildings and grounds but ensures GSA of its responsibility to safely and efficiently operate and maintain the public buildings and grounds under its charge and control.

EFFECTIVE DATE: January 15, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent L. Crivella, Legal Counsel, Public Buildings Division, Office of General Counsel (202 566-0495).

SUPPLEMENTARY INFORMATION:

(a) Background

The Public Buildings Cooperative Use Act of 1976 (Pub. L. 94-541), among other things, encourages the use of auditoriums, meeting rooms, courtyards, rooftops, and lobbies of public buildings by persons, firms, or organizations engaged in cultural, educational, or recreational activities that will not disrupt the operation of the buildings. GSA recognizes that once these areas had been designated by the Congress as public fora, consideration must be given to the constitutional guarantees of freedom of speech, free exercise of religion, and the right to peaceable assembly. GSA may not prohibit persons, firms, or organizations from occasionally using these areas of public buildings solely on the basis of the content of the activity.

These regulations have been established to promote the occasional use of public buildings under the charge and control of GSA for cultural, educational, and recreational activities, as well as activities protected by the First Amendment. GSA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not

significant for the purposes of Executive Order 12044.

(b) Comments Received

On February 15, 1980, a notice of proposed rulemaking was published in the *Federal Register* (45 FR 10379) concerning the procedures to be followed in permitting the occasional use of public buildings and grounds under the charge and control of GSA. Interested parties were given an opportunity to submit comments on or before April 15, 1980. All comments were considered. GSA received eight comments on the proposed rule. Comments were received from Government agencies who occupy GSA-controlled buildings, religious organizations, and organizations concerned about the preservation of civil liberties. Organizations representing artists who desire to display art in public buildings also submitted comments. Many of these comments focused on significant constitutional issues relevant to the GSA proposal. The comments received have been helpful and the legal issues raised by the comments have prompted further revisions to the proposal. In the final rule GSA has endeavored to be attentive to the First Amendment rights of individuals who desire to use areas of public buildings as a forum for the expression of ideas, advocacy of causes, and solicitation of funds, as well as responsive to GSA's duties to safely and efficiently maintain and operate these public buildings.

(c) Specific Comments

The following is a categorized summary of the major issues which were commented on and the actions taken:

Permitted activities. Two commenters criticized the regulations because they did not describe all of the activities which will be allowed in the public areas of public buildings. The Public Buildings Cooperative Use Act of 1976 (Cooperative Use Act) specifically permits the use of public areas of public buildings for cultural, educational, and recreational activities. "Cultural," "educational," and "recreational" activities are defined in the Cooperative Use Act and those definitions have been incorporated into these regulations in § 101-20.701 (h), (i), and (j).

GSA recognizes that persons or organizations engaging in activities constitutionally protected by the First Amendment must be afforded access to public areas of public buildings. However, GSA does not believe that it is necessary, or possible, to list in these regulations all activities protected by

the First Amendment. Modifications have been made to the proposed regulations which should lend greater specificity to this area. For example, § 101-20.702 has been revised to require persons or organizations desiring to use a public area of a public building or its grounds for the purpose of soliciting funds to submit one of the three statements listed in § 101-20.702(c), (1), (2), or (3). Through this revision GSA intends to clarify that it will permit solicitation by all those persons and organizations to which the statements in § 101-20.702(c) would refer, if the proposed solicitation would otherwise be in accord with the provisions of Subpart 101-20.7. That is, with the exception of those types of solicitation proscribed by § 101-20.308, solicitation of funds is an activity permitted in accordance with the provisions of Subpart 101-20.7. Examples of permissible forms of solicitation would be the solicitation of funds for religious purposes and the solicitation of funds for tax-exempt organizations. Distribution of literature is another example of an activity clearly stated to be permissible in public areas of public buildings. § 101-20.309 provides for this activity. GSA does not intend the above-mentioned examples to be a limitation on the extent of activities permitted in public areas of public buildings.

Public areas. One commenter criticized the definition of the term "public area" as being overly vague. The commenter suggested that GSA specify in the regulations which areas were to be available for public use and how many permits would be allowed for each area. GSA is aware that other agencies have issued regulations which list the specific areas available and the maximum number of permits for those areas. However, there exists a practical difference between other agencies' regulations and GSA's. Other agencies' regulations usually apply to only a small number of facilities. For example, the Federal Aviation Administration has recently issued regulations (45 FR 35314, May 27, 1980) which apply to only two facilities, Washington National Airport and Dulles Airport. GSA's regulations, however, would apply to thousands of public buildings under the charge and control of GSA. Because of the lack of similarity of most of the buildings with regard to their construction, design, and physical layout, it would not be possible to issue regulations listing the specific areas of each public building available for use. Nor would it be possible to specify the maximum number of permits which could be issued for these areas. GSA believes that the definition of the

term "public area" set forth in these regulations specifies, to the extent practicable, those areas of public buildings available for use. It is not intended that the examples listed in §101-20.701(b) (that is, lobbies, courtyards, meeting rooms, and auditoriums) be a limitation on the areas in a specific building that are available for use under these regulations. The fact that the Cooperative Use Act lists lobbies, courtyards, meeting rooms, and auditoriums as available for use is evidence that these areas are appropriate places for the exercise of certain First Amendment expressions. Whether areas other than lobbies, courtyards, meeting rooms, and auditoriums are "public areas" depends upon the purpose or use of the area. An area that is open to members of the public to visit or transact Government business does not necessarily convert that area into a "public area" for purposes of this regulation. However, if such an area has been made available to members of the public for expression of their First Amendment rights, whatever form that may take, then the area would be a "public area."

Permit system. Several commenters criticized the provision which required that an application for a permit be submitted at least 30 days but no more than 90 days in advance of the proposed use as being too restrictive. GSA agrees. The final regulations will require that a decision on the issuance of a permit be made promptly and not later than 10 days of receipt of a completed application. Three commenters criticized the requirement in §101-20.702(a) that applicants for a permit provide information regarding their identity. The commenters asserted that applicants desiring to distribute literature have a right to anonymity that would be violated by §101-20.702(a). The commenters cite the case of *Talley vs. California*, 362 U.S. 60 (1960) in support of their argument. GSA respectfully disagrees. The regulations in the *Talley vs. California* case are distinguishable from the present regulations. In that legal case persons seeking to distribute literature (leafletters) were required to place their name, address, and the organization they represented on the literature itself. By complying with this requirement, the leafletter's identity was known to the person receiving the literature. It was feared that revealing the leafletter's identity to the person receiving the literature might deter peaceable discussion of public matters of importance and therefore have a chilling effect on the leafletter's First Amendment right to distribute this

literature. Under GSA's regulations, a leafletter is not required to place his or her name, address, and the organization represented on the literature. The identity of the leafletter would not be known to the person receiving this literature and there would be no deterrent to the peaceable discussion between the parties of public matters of importance.

Restrictions on behavior. Several commenters also criticized the requirement contained in §101-20.707(a)(5) that all permittees wear identification badges while conducting the activities. The commenters expressed the same above-mentioned concern; i.e., the leafletters' right to anonymity would be violated. GSA agrees in part. The regulations have been modified to require that only those permittees engaging in the solicitation of funds not prohibited by §101-20.308 would be required to wear an identification badge.

Several commenters also criticized the requirement contained in §101-20.707(a)(6) that donations be accepted only at solicitation booths. This requirement has been deleted from the final regulations. All comments have been considered. Modifications have been made to the proposed regulations as set forth below.

Accordingly GSA amends 41 CFR Part 101-20 as follows:

Subpart 101-20.3—Conduct on Federal Property

1. Section 101-20.302 is revised to read as follows:

§ 101-20.302 Admission to property.

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.7. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency Program after consultation with the buildings manager and the ranking representative of the Federal Protective Service Division responsible for protection of the facility or the area. This requirement does not preempt the authority of the Regional Director, Federal Protective Service Division, or any other authorized GSA official to effect a security alert of a facility in

accordance with GSA Order, Physical Security of Buildings Alert Guidelines (PBS 5930.16), dated February 20, 1976. This action shall be coordinated with the designated official. The designated official is defined in § 101-20.504-3(f) as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the above applicable provisions is a violation of these regulations.

2. Section 101-20.303 is revised to read as follows:

§ 101-20.303 Preservation of property.

The improper disposal of rubbish on property; the willful destruction of or damage to property; the theft of property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building, is prohibited.

3. Section 101-20.307 is revised to read as follows:

§ 101-20.307 Alcoholic beverages and narcotics.

Operation of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. This prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings

manager who shall inform the Federal Protective Officer, or other authorized officials, responsible for the security of the property.

4. Section 101-20.308 is revised to read as follows:

§ 101-20.308 Soliciting, vending, and debt collection.

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the occupant agencies; (b) concessions or personal notices posted by employees on authorized bulletin boards; (c) solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95-454); and (d) lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 [40 U.S.C. 490(a)(16)]. Public areas of GSA-controlled property may be used for other activities permitted in accordance with Subpart 101-20.7.

5. Section 101-20.309 is revised to read as follows:

§ 101-20.309 Distribution of handbills.

Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property is prohibited, except as authorized in § 101-20.308 or when these displays are conducted as part of authorized Government activities. Distribution of materials, such as pamphlets, handbills, or flyers, is prohibited, except in the public areas of the property as defined in § 101-20.701(b), unless conducted as part of authorized Government activities. Any person or organization proposing to distribute materials in a public area under this section shall first obtain a permit from the buildings manager under Subpart 101-20.7 and shall conduct distribution in accordance with the provisions of Subpart 101-20.7. Failure to comply with those provisions is a violation of these regulations.

6. The captions in Subpart 101-20.7, the table of contents and two new sections are added. Thus Subpart 101-20.7 is revised as follows.

Subpart 101-20.7—Occasional Use of Public Areas in Public Buildings

Sec.

- 101-20.700 Scope of subpart.
- 101-20.701 Definitions.
- 101-20.702 Permits.
- 101-20.703 Disapproval of application or cancellation of permit.
- 101-20.704 Appeals from disapproval of application or cancellation of permit.
- 101-20.705 Schedule of use.
- 101-20.706 Services and costs.
- 101-20.707 Restrictions on behavior.
- 101-20.708 Posting of notices and information bulletins.
- 101-20.709 Nonaffiliation with the Government.

Subpart 101-20.7—Occasional Use of Public Areas in Public Buildings

§ 101-20.700 Scope of subpart.

The Public Buildings Cooperative Use Act of 1976 (Pub. L. 94-541), among other things, encourages the occasional use of public areas of public buildings and grounds for cultural, educational, and recreational activities. The purpose of these regulations is to create rules and procedures to be followed in permitting the occasional use of public buildings and grounds for these and other activities authorized by this subpart.

§ 101-20.701 Definitions.

(a) "Public building" shall mean any building and its grounds, or part thereof, under the charge and control of the General Services Administration.

(b) "Public area" shall mean any area of a public building or its grounds ordinarily open to members of the public, such as lobbies, courtyards, auditoriums, meeting rooms, and any other area not specifically leased by any lessee of the public building.

(c) "Buildings manager" shall mean the employee of GSA designated to supervise the implementation of the occasional use provision of the Public Buildings Cooperative Use Act within a particular public building and its grounds.

(d) "Regional officer" shall mean the regional director of the Buildings Management Division of GSA designated to supervise the implementation of the occasional use provision of the Public Buildings Cooperative Use Act within those regions that GSA may from time-to-time create.

(e) "Applicant" shall mean any person or organization who applies for a permit to use a public area within a public building or its grounds.

(f) "Permittee" shall mean any person or organization who has been granted a permit to use a public area within a public building or its grounds.

(g) "Recognized labor organization" shall mean a labor organization recognized under Title VII of the Civil Service Reform Act of 1978 (Pub. L. 95-454) governing labor management relations.

(h) "Cultural activities" shall mean activities, including but not limited to films, dramatics, dances, and musical presentations, and fine arts exhibits, whether or not these activities are intended to make a profit.

(i) "Educational activities" shall mean activities, including but not limited to the operation of libraries, schools, day care centers, laboratories, and lecture and demonstration facilities.

(j) "Recreational activities" shall mean activities, including but not limited to the operation of gymnasiums and related facilities.

(k) "Commercial activities" shall mean activities undertaken for the primary purpose of obtaining a profit for the benefit of an individual or organization organized for profit, as opposed to activities whose purpose is the expression of ideas or advocacy of causes, whether of a religious, artistic, political, charitable, educational, or cultural nature, where the commercial aspects involved are incidental to the purpose of the activity.

§ 101-20.702 Permits.

(a) Application. Any person or organization desiring to use a public area of a public building or its grounds shall first obtain a permit from the buildings manager. To obtain this permit, a copy, sample, or description of any material or item proposed for distribution or display and a written statement shall be submitted setting forth the following:

(1) The full name, mailing address, and telephone number of the applicant;

(2) The full name, mailing address, and telephone number of the person or organization sponsoring, promoting, or conducting the proposed activity;

(3) The full name, mailing address, and telephone number of the individual person or persons who will have supervision of and responsibility for the proposed activity;

(4) A description of the proposed activity;

(5) The proposed dates and hours during which the activity is to be carried out; and

(6) The approximate number of persons to be engaged in this activity, if known.

(b) Applicants authority. If the applicant claims to represent an organization, a letter or other documentation is required showing that

the applicant has authority to represent that organization.

(c) Applications for permit to solicit contributions. Any person or organization desiring to use a public area of a public building or its grounds for purposes of soliciting funds not prohibited by § 101-20.308 shall, in addition to the above requirements, submit a statement signed by the applicant that the:

(1) Applicant represents and will be soliciting funds for the sole benefit of a religion or religious group;

(2) Applicant's organization has received an official Internal Revenue Service (IRS) ruling or letter of determination stating that the organization or its parent organization qualifies for tax-exempt status under 26 U.S.C. 501 (c)(3), (c)(4), or (c)(5); or

(3) Applicant's organization has applied to the IRS for a determination of tax-exempt status under 26 U.S.C. 501 (c)(3), (c)(4), or (c)(5), and that the IRS has not yet issued a final administrative ruling or determination of this status.

(d) Failure to complete application. Failure to submit the information required by paragraphs (a), (b), and (c), of this section shall result in denial of a permit.

(e) Filing. Applications shall be filed during regular working hours in the buildings manager's office or such other place as he or she may designate. Applications may be submitted by mail or in person.

(f) Permit issuance. A single permit shall be issued within 10 days following receipt of the completed application by the buildings manager.

(1) Each permit shall authorize the permittee to conduct the activity for the period of time requested; provided that a permit shall not be issued for a period of time in excess of 30 calendar days, unless specifically approved by the regional officer. After the expiration of the permit, a new permit may be issued to the former permit holder upon submission of a new application. In such a case, applicants may be permitted to incorporate by reference any required information or documentation filed with a previous application.

(2) If permits are requested for the same public area for the same time period, the buildings manager will issue permits on a first-come-first-served basis.

§ 101-20.703 Disapproval of application or cancellation of permit.

(a) Grounds for disapproval or cancellation. The buildings manager shall disapprove any application or cancel an issued permit for use of a public area if the proposed use:

(1) Is a commercial activity as defined in § 101-20.701(k);

(2) Obstructs the free ingress and egress of the users of the public area;

(3) Damages the public building or any property within the public building;

(4) Disrupts the official business of the agency or agencies occupying the public buildings;

(5) Interferes with a tenant's quiet enjoyment of their leasehold;

(6) Interferes with a previously approved use of the public area by another member, or members, of the public;

(7) Is obscene within the meaning of obscenity in 18 U.S.C. 1461-65;

(8) Pertains to any judicial proceeding then pending in the public building and this use is intended to influence or impede the judicial proceeding;

(9) Is in violation of the prohibition against political solicitations in 18 U.S.C. 603; or

(10) Is being conducted with a permit issued in response to an intentionally false or incomplete application.

(b) Notice of disapproval of application or cancellation of permit. Upon disapproving an application or canceling an issued permit for any of the above reasons, the buildings manager shall:

(1) Notify promptly the applicant or permittee in writing of disapproval or cancellation and the reasons for this action; and

(2) Inform the applicant of his or her right to appeal the disapproval or cancellation to the regional officer under § 101-20.704.

§ 101-20.704 Appeals from disapproval of application or cancellation of permit.

(a) Time for appeal. Within 5 calendar days of notification of the buildings manager's decision to disapprove any application or cancel an issued permit under § 101-20.703, the applicant or permittee may appeal the buildings manager's determination to the regional officer by notifying the regional officer, in writing, that he or she desires to appeal.

(b) Record. Although a trial-type hearing or presentation is not required, the applicant or permittee and the buildings manager shall have the opportunity to orally state the reasons that the application or cancellation should or should not be approved. Written materials and documents may also be submitted. The regional officer shall affirm or reverse the buildings manager's determination based on this information.

(c) Time for review. The regional officer shall affirm or reverse the buildings manager's determination

within 10 days of the date on which the regional officer received the applicant or permittee's notification of his or her desire to appeal. If the regional officer does not rule within this period, the application will be considered to be approved or the permit validly issued.

(d) Notification. Upon reaching a decision on an appeal taken under § 101-20.704, the regional office shall promptly notify the applicant or permittee and the buildings manager of the decision and the reasons therefore.

§ 101-20.705 Schedule of use.

(a) Schedule. Nothing in these regulations shall prevent the buildings manager from:

(1) Reserving certain times of the year for use of public areas of the public buildings for official Government business;

(2) Setting aside certain days or time for maintenance, construction, or repair; or

(3) Preempting an approved use of a public area for official Government business.

(b) Time. Public areas made available may be used during or after the regular working hours of Federal agencies, provided this afterhour use will not interfere with the conduct of Government business. When public areas are used by permittees under Subpart 101-20.7 after normal working hours, all adjacent areas not approved for afterhours usage shall be locked, identified by signs, or physically barricaded, as appropriate, to restrict the participants' movements to only that space or areas(s) approved for usage.

§ 101-20.706 Services and costs.

(a) Costs. The space to be provided under these regulations is furnished free of charge. Services normally provided at the building in question, such as security, cleaning, heating, ventilating, and air-conditioning, shall also be provided free of charge by GSA. The applicant shall be requested to reimburse GSA for services over and above those normally provided. If the applicant desires to provide services, such as security and cleaning, this request must be approved by the regional officer. The Regional Administrator may provide the services free of charge if the cost is insignificant and if it is in the public's interest.

(b) Alteration of public area. Generally, there shall be no alteration to public areas used under these regulations by persons, firms, or organizations, unless it is determined by the Regional Administrator that changes should be made in a public building to encourage and aid in the proposed use.

The permittee must make adequate provisions for the:

- (1) Protection of the safety of an user of the public area; and
 - (2) Prevention of injury or damage to the public building.
- (c) Program requirements. The furnishing of any item necessary for the proposed activity, such as tickets, audiovisual equipment, etc., shall be the responsibility of the permittee.

§ 101-20.707 Restrictions on behavior.

(a) General. The permittee shall be subject to the rules and regulations governing public buildings and grounds in Subpart 101-20.3. In addition, a permittee shall:

- (1) Not misrepresent his or her identity to the public;
- (2) Not distribute any item for which the prior approval of the buildings manager or his or her representative has not been obtained, under § 101-20.702(d) of these regulations;
- (3) Not leave leaflets or other material unattended at any place on GSA-controlled property;
- (4) Not conduct any activities in a misleading or fraudulent manner;
- (5) Not discriminate on the basis of race, creed, color, sex, or national origin, in conducting the permitted activities; and
- (6) Not engage in activities that would interfere with the preference afforded the blind licensees under the Randolph-Sheppard Act (20 U.S.C. 107).

(b) Identification badges. Permittees engaging in the solicitation of funds not prohibited by § 101-20.308 shall wear an identification badge at all times on GSA-controlled property containing the following:

- (1) Name;
- (2) Address;
- (3) Telephone number; and
- (4) Name of group or organization.

§ 101-20.708 Posting of notices and information bulletins.

Only the following types of notices or information bulletins may be posted on bulletin boards in nonpublic areas of the public building:

- (a) Official business notices of the occupant agency;
- (b) Request for funds for welfare, health, and other purposes, approved by the head of the occupant agency;
- (c) Notices to Federal employees by concessionaries and agency employees of groups or organizations recognized by the occupant agency;
- (d) Personal notices of agency employees, such as the sale of an employee's home, requests for carpool participation, etc.; and
- (e) Recognized labor organization notices and issuances on space provided

by the agency under agreement between the agency and the recognized labor organization.

§ 101-20.709 Nonaffiliation with the Government.

The General Services Administration reserves the right to advise the public through signs or announcements of the presence of any permittees and of their nonaffiliation with the Federal Government.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 5, 1980.

R. G. Freeman III,
Administrator of General Services.

(FR Doc. 81-1339 Filed 1-14-81; 8:45 am)

BILLING CODE 6020-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Time Limits for States To File Claims

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule with a comment period.

SUMMARY: HHS will pay a State the Federal share of a State expenditure, under a State plan approved under any of several titles of the Social Security Act, only if the State files a claim with HHS for that expenditure within 2 years (15 months in some cases) after the calendar quarter in which the State made the expenditure. This rule implements section 306 of the "Adoption Assistance and Child Welfare Act of 1980."

EFFECTIVE DATE: January 1, 1981.

COMMENT DATE: Your comments will be considered if we receive them no later than March 16, 1981.

ADDRESSES: Send your written comments to the Social Security Administration, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: For financial assistance programs under Titles I, IV-A, X, XIV and XVI (AABD): Kent Dickson—(202) 245-2056. For child support enforcement programs under Title IV-D: Pera P. Daniels—(301) 443-2910. For child welfare services

programs under title IV-B and foster care and adoption assistance programs under Title IV-E: Jim Rich—(202) 755-7583. For social services programs under Titles I, IV-A, X, XIV, XVI (AABD) and XX: Bettye Mobley—(202) 472-3075. For medical assistance programs under Title XIX: Miles McDermatt—(301) 594-5726. For general legal questions: Richard K. Wulff—(202) 245-6733.

SUPPLEMENTARY INFORMATION:

Regulatory Procedural Requirements

We have determined that under E.O. 12044 these regulations are significant but no Regulatory Analysis is required.

We are publishing them as a final rule without prior Notice of Proposed Rulemaking (NPRM) and opportunity for public comment because they are necessary to implement section 306 of Pub. L. 96-272, which imposes a deadline of December 31, 1980 for States to file certain claims. Public Law 96-272 was enacted June 17, 1980, leaving insufficient time for us to publish an NPRM, allow time for public comment, consider the comments, and publish final regulations before January 1, 1981. Therefore, we find that notice and comment on these regulations before they take effect would be impracticable and contrary to the public interest.

Nonetheless, we wish to have the advantage of the information and opinions we may receive through public comments, and we will consider any comments we receive by the stated date. After we consider any comments we receive, we will make changes in these regulations as we deem appropriate.

We also find good cause for issuing these regulations with an effective date less than 30 days after issuance, because the statutory effective date is January 1, 1981.

Because this regulation applies only to States and imposes no conditions and requirements on small entities, the Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

Statutory Basis

Section 306 of Pub. L. 96-272, the "Adoption Assistance and Child Welfare Act of 1980," adds a new section 1132 to the Social Security Act (the Act). Its intent is to enable HHS to know the total amounts of its obligations for each fiscal year within a reasonable time after the end of the year. The provision prohibits HHS from paying Federal financial participation (FFP) for a State expenditure made after September 30, 1979, under a State plan approved under certain titles of the Act,